IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 46 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME TAX

Versus

ROHIT MILLS LIMITED.

Appearance:
MR MIHIR JOSHI, Advocate with
MR MANISH R BHATT for Petitioner
MR JP SHAH with MR MANISH SHAH for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE A.R.DAVE

Date of decision: 30/09/98

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

The Income Tax Appellate Tribunal has, at the instance of the Revenue, referred the following questions under Section 256(1) of the Income Tax Act, 1961, for the

opinion of this Court:-

1. "Whether, on the facts and in circumstances of the case, the Tribunal was right in law in allowing the claim of the assessee for deduction of Rs. 12,605/- being the bank guarantee commission as a revenue expenditure?"

2. "Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in deleting the addition of Rs. 5,43,500/- from the assessment of the assessee on the ground that the Inspecting Asstt.Commissioner of Income Tax could not in a draft approval u/s 144B make any new addition to the approved draft assessment order?"

Question No.1:

2. The relevant Assessment Year is 1976-77. The assessee filed return of income on 22.6.1976 for the calendar year 1977 and inter-alia claimed a sum of Rs. 12,605/- on account of Bank guarantee commission. The ITO disallowed the same on the ground that the guarantee being given for the purchase of the capital asset of the company, the expenditure constituted capital expenditure. While disallowing the same, the ITO granted depreciation of it, treating it as an addition to the value of machinery. On appeal, the CIT (Appeals) allowed the expenditure following the decision of the Andhra Pradesh High Court in CIT Vs. Akkamamba Textiles Ltd., reported in 117 ITR 294. The Tribunal opined that the guarantee commission was required to be allowed as a proper revenue deduction. The question is now settled by the decisions of the Hon'ble Supreme Court in Additional Commissioner of Income Tax Vs. Akkamamba Textiles Ltd., reported in 227 ITR 464 and CIT Vs. Sivakami Mills Ltd. reported in 227 ITR 465. The Supreme Court has, while confirming the decision of the High Court in Akkamamba Textiles Ltd. Vs. Addl.CIT (supra), held that guarantee commission paid to a Bank was revenue expenditure and hence, was an allowable deduction in computing the total income of the assessee in the relevant assessment year. The Tribunal was therefore, right in allowing the claim of the assessee for deduction of Rs. 12,605/- being Bank guarantee commission as revenue expenditure and the question No.1 is accordingly answered in the affirmative against the revenue and in favour of the assessee.

3. Question No.2:

The ITO had, on 14.2.1997, made a draft order under Section 144B and while that reference was pending, certain directions were issued by the IAC under Section 144A of the Act to make enquiries in respect of the sales made by the Engineering Division of the assessee to Mehta Corporation Pvt.Ltd., Ahmedabad and Bombay; Rajiv Nettings & Engineers Pvt.Ltd. and Mehta Investment and Traders Pvt.Ltd. In view of these directions of the IAC, the ITO made enquiries and found that Mehta Investment and Traders Pvt.Ltd. came into existence on 23.12.1974 and it's Directors and share-holders were related to the Directors of the assessee company. From the balance-sheet of the accounting period 1975-76, 1976-77 and 1977-78, the ITO found that the said company was having only one employee who was paid hardly Rs. 500 per month and there were no expenses incurred by the company to show that it carried out business of pipe fittings on the scale as shown in the balance-sheet. It was noted that the sales by the assessee were being made directly to the parties and bills were only issued in the name of Mehta Investment and Traders Pvt.Ltd., which in turn issued bills to the real purchasers. The ITO came to the conclusion that the transactions of sale by the assessee company to Mehta Investment and Traders Pvt.Ltd. were made with a view to transfer the profit of the assessee company to a company in which relatives of the directors of the assessee company were interested. As regards Messrs Rajiv Nettings and Engineering Pvt.Ltd., the ITO on enquiry found that it had no corporate office, but only a room allotted to it by the assessee and that it was having only a skeleton staff accommodated in the assessee's premises and further that it had no sales organisation. The ITO found that no services were being rendered by that company to the assessee for carrying out the sales activities of it's Engineering Division. He found that the assessee had transferred profits to the said companies without there being any consideration or services rendered by them. Even in respect of Mehta Corporation Pvt.Ltd., the ITO on enquiry found that no data was available in respect thereof and that similar profit was transferred by the assessee company to that company also. The total sales to these three companies were to the tune of Rs. 1,35,88,290/- and the ITO taking the average gross profit of 4 per cent, came to the conclusion that a sum of Rs. 5,43,500/- was transferred by the assessee company to these three associated companies in which the directors of the assessee company were interested, without any services being rendered by them to the assessee, and added the said amount in the total income of the assessee. This assessment order was made on 11.9.1979 under Section 143(3), read with Section

144B of the said Act. A direction was received under Section 144B from the IAC against the second draft order, which was sent to the IAC on 24.5.1979 after the IAC had issued directions under Section 144A(1) subsequent to the first draft order which was sent to him on 16.2.1979. The directions received under Section 144B from the IAC are treated as a part of the said assessment order dated 11.9.1979 and enclosed with it.

From the directions sent by the IAC under Section 144B of the Act in response to the draft assessment order forwarded on 25.4.1979 by the ITO to the IAC, it transpires that the assessee had raised an objection contending that in view of the reference already made under Section 144B of the Act by forwarding the first draft assessment order on 16.2.1979 to the IAC, there were no proceedings for assessment pending before the ITO and therefore, the IAC was not empowered to resort to the provisions of Section 144A(1) of the Act. It was also contended before the IAC that the assessee was not given an opportunity of being heard by the IAC as required by proviso to Section 144A(1) of the Act. The IAC rejected the preliminary objection holding that the assessment proceedings continued till the total income was computed and tax determined and till the order computing the total income and tax was signed by the ITO. He held that since the assessment was still pending, the IAC was well within his powers in issuing directions under Section 144A(1) of the Act to the ITO even after the first draft assessment order was forwarded to him by the ITO on 16.2.1979. The IAC also rejected the second objection by holding that an opportunity of being heard to the assessee was necessary under the proviso to Section 144A(1) of the Act only if any direction prejudicial to the assessee is given by the IAC to the ITO. It was held that in the instant case the IAC had given directions under Section 144A(1) of the Act to the ITO merely to make investigation on certain lines and therefore, such directions could not in view of the Explanation to Section 144A(1), be said to be in any way prejudicial to the assessee. As regards the addition of the sum of Rs. 5,43,500/- on account of diversion of profit on the transactions with the aforesaid three companies, the IAC took note of the fact that the assessee was given full opportunity to explain all the facts and circumstances of the transactions in question and found that it was established that the sales were actually effected directly by the assessee company to the parties and these companies had done nothing in respect of such transactions and that the ITO was justified in holding that a part of the income of the assessee company was diverted to these companies.

As noted above, pursuant to the directions issued by the IAC under Section 144B(4) on the second draft assessment order forwarded to the IAC on 25.4.1979, the ITO made the final assessment order on 11.9.1979. In the appeal filed by the assessee before the CIT (Appeals), the first appellate authority accepted the assessee's contentions and deleted the addition of Rs. 5,43,500/made by the ITO in the total income of the assessee. In the appeal preferred by the ITO before the Tribunal after adverting to the contentions of both the sides in respect of this item, the Tribunal accepted the contention of the assessee that the IAC could not have come up with a new addition of Rs. 5,43,500/- because in the draft order sent to the assessee, there was no indication or mention of the alleged benami activity and it was only after the assessee's objections were raised against the draft order that the IAC had come up with this new addition. The Tribunal accepted the assessee's contention that this was beyond the jurisdiction of the IAC. The Tribunal held that in view of its accepting the contention of the assessee, it did not intend to go in to the merits of the case and upheld the Commissioner's order for the reasons given by it and not for the reasons stated by the CIT (Appeals).

4. It has been contended on behalf of the Revenue that after the first draft assessment order was prepared and forwarded on 16.2.1979 under Section 144B of the Act to the IAC, directions were received from the IAC by the ITO under Section 144A(1) of the said Act as recorded in paragraph 14.1 of the order of assessment dated 11.9.1979 and it was pursuant to those directions that the ITO had made investigations and forwarded the second draft assessment order on 25.4.1979, which fact is mentioned in the directions issued by the IAC which are part of the final order of the ITO and annexed to it. It was submitted that the Tribunal over-looked this aspect and proceeded on an erroneous footing as if the IAC had for the first time in his directions under Section 144B(4) of the Act, come up with the addition of the said amount. It was contended that during pendency of a reference under Section 144B, the IAC's powers under Section 144A(1) of the Act to issue directions in respect of matters which were not covered under the objections of the assessee as contemplated by Section 144B of the Act, were not taken away. It was submitted that the directions which were issued by the IAC under Section 144A(1) of the Act were only indicative of the lines of investigation, which was in fact pursued by the ITO by making enquiries in respect of the transactions with the

said three companies, and before the ITO, the assessee had full opportunity of being heard in the matter. It was submitted that it was not incumbent upon the IAC to hear the assessee before issuing the directions of this nature under the proviso to Section 144A(1) of the Act, whereby the ITO was only asked to make enquiries in respect of the sales carried out by the Engineering Division of the assessee to the three Private Limited Companies. Reliance was placed by the learned Counsel on the decision of the Kerala High Court in Commissioner of Income Tax Vs. N. Krishnan, reported in 172 ITR 604; the Karnataka High Court in Commissioner of Income Tax Vs. M.S.P Exports Pvt.Ltd., reported in 196 ITR 762; the Calcutta High Court in Arrah Sasaram Light Railway Co.Ltd. Vs. Commissioner of Income Tax, reported in 204 ITR 807 and Shankar Lahiri Vs. CIT, reported in 78 Taxmann 364, in support of his contentions.

5. The learned Counsel appearing for the assessee contended that the directions which were issued under Section 144A(1) of the Act to the ITO were not in respect of matters which were already investigated by the ITO and therefore, such directions should be treated as ex-facie prejudicial to the interest of the assessee and could not have been given without hearing the assessee, in view of the proviso to Section 144A(1) of the Act. It was submitted that the very fact that on some points which were not covered under the earlier investigation already made by the ITO, the IAC was now instructing him to carry out investigation, showed that it was a direction prejudicial to the assessee because the assessee had to undergo the agony of facing such investigation again. Giving an analogy from Criminal Jurisprudence, the learned Counsel contended that a person would be surely prejudiced if he is required to face a trial. It was further contended that the IAC could not have issued any such directions under Section 144A(1) of the Act during the pendency of the reference already made under Section 144B(4) thereof. Relying upon the decision of the Supreme Court in Panchmahal Steel Ltd. Vs. U.A. Joshi, ITO, and anr. reported in 225 ITR 458, which affirmed the decision of this High Court, the learned Counsel contended that when the draft assessment order is forwarded to the IAC under Section 144B of the Act, the assessment is already made and therefore, when no assessment proceedings are pending before the ITO by virtue of the reference under Section 144B(4) of the Act already having been made, no directions could be issued to the ITO by the IAC under Section 144A(1) of the Act, since such directions can be issued only when the

assessment proceedings are pending before the ITO.

6. Inspecting Assistant Commissioners were amongst the Income Tax authorities enumerated in Section 116 of the Act and as provided by Section 118(2), the Income Tax officers were subordinate to the Commissioner and the Inspecting Assistant Commissioner within whose jurisdiction they perform their functions. As provided by Section 119(3), every Income Tax Officer employed in the execution of the Act, is required to observe and follow such instructions as may be issued to him for his guidance by the Director of Inspection or by the Commissioner or by the Inspecting Assistant Commissioner, within whose jurisdiction he performs his functions. The IAC was required to perform functions in respect of such areas or of such person or classes of persons or of such income or classes of income or of such cases or classes of cases as the Commissioner directed under Section 123(1) of the said Act. The concurrent jurisdiction as that of Income Tax Officer could be conferred on the IAC by the Commissioner under Section 125A(1) of the Act. The IAC was empowered by Section 125A(3) to issue instructions to the Income Tax Officer within whose jurisdiction he performs his functions in relation to any particular proceeding or the initiation of any proceeding under the Act for his guidance. As per the explanation to sub-section (3) of Section 125A, no instruction as to the lines on which an investigation connected with the assessment should be made shall be deemed to be an instruction prejudicial to the assessee so as to require hearing as contemplated by the proviso to sub-section (3) of Section 125A.

7. Sections 144A and 144B of the Act, with which we are concerned, as they stood at the relevant time read as under:-

"Power of Inspecting Assistant Commissioner to issue directions in certain cases.

144A. (1) An Inspecting Assistant Commissioner may, on his own motion or on a reference being made to him by the Income Tax Officer or on the application of an assessee, call for and examine the record of any proceeding in which an assessment is pending and, if he considers that, having regard to the nature of the case or the amount involved or for any other reason, it is necessary or expedient so to do, he may issue such directions as he thinks fit for

the guidance of the Income-tax Officer to enable him to complete the assessment and such directions shall be binding on the Income-tax Officer:

Provided that no directions which are prejudicial to the assessee shall be issued before an opportunity is given to the assessee to be heard.

Explanation:

For the purposes of this sub-section, no direction as to the lines on which an investigation connected with the assessment should be made, shall be deemed to be a direction prejudicial to the assessee.

(2) The provisions of this section shall be in addition to, and not in derogation of, the provisions contained in sub-section (3) of Section 119.

144B.(1) Notwithstanding anything contained in this Act, where, in an assessment to be made under sub-section (3) of Section 143, the Income-tax Officer proposes to make any variation in the income or loss returned which is prejudicial to the assessee and the amount of such variation exceeds the amount fixed by the Board under sub-section (6), the Income-tax Officer shall, in the first instance, forward a draft of the proposed order of assessment (hereafter in this section referred to as the draft order) to the assessee.

(2) On receipt of the draft order, the assessee may forward his objections, if any, to such variation to the Income-tax Officer within seven days of the receipt by him of the draft order or within such further period not exceeding fifteen days as the Income-tax Officer may allow on an application made to him in this behalf.

(3) If no objections are received within the period or the extended period aforesaid, or the assessee intimates to the Income-tax Officer the acceptance of the variation, the Income-tax Officer shall complete the assessment on the basis of the draft order.

(4) If any objections are received, the

Income-tax Officer shall forward the draft order together with the objections to the Inspecting Assistant Commissioner and the Inspecting Assistant Commissioner shall, after considering the draft order and the objections and after going through (wherever necessary) the records relating to the draft order, issue, in respect of the matters covered by the objections, such directions as he thinks fit for the guidance of the Income-tax Officer to enable him to complete the assessment:

Provided that no directions which are prejudicial to the assessee shall be issued under this sub-section before an opportunity is given to the assessee to be heard.

(5) Every direction issued by the Inspecting Assistant Commissioner under sub-section (4) shall be binding on the Income-tax Officer.

(6) For the purposes of sub-section (1), the Board may, having regard to the proper and efficient management of the work of assessment, by order, fix, from time to time, such amount as it deems fit:

Provided that different amounts may be fixed for different areas:

Provided further that the amount fixed under this sub-section shall, in no case, be less than twenty-five thousand rupees.

(7) Nothing in this section shall apply to a case where an Inspecting Assistant Commissioner exercises the powers or performs the functions of an Income-tax Officer in pursuance of an order made under Section 125 or Section 125A."

8. It will be seen from the provisions of Section 144A(1) of the Act that the IAC can exercise his powers either on his own motion or on an application being made by an assessee or on a reference being made by the ITO in respect of proceedings in which an assessment is pending. He is authorised to call for and examine the record of any such proceedings and issue directions for the guidance of the ITO to complete the assessments. He can issue such directions whenever he considers it necessary or expedient so to do having regard to the nature of the

case or the amount involved or for any other reason. If the directions are prejudicial to the assessee, he is required to give an opportunity of being heard to the assessee under the proviso to sub-section (1) of Section 144A of the Act. However, if the direction is as to the lines on which an investigation connected with the assessment should be made, such direction will be deemed not to be prejudicial to the assessee. Section 144A of the Act is a provision of general application and it gives wide powers to IAC to issue binding directions, in the matters which are pending for assessment, for the guidance of the ITO to enable him to complete the assessment. This would cover all the stages of pendency till the making of the final assessment order. They would therefore, include even the stage of making of the draft order and thereafter until the final order is made. Where a draft order is prepared in cases where the ITO proposes a variation in the income/loss returned which is prejudicial to the assessee, of an amount exceeding the amount fixed by the Board under sub-section (6) of Section 144B of the Act and if no objections are received against the draft order, the assessment would still be pending before him and directions could be issued by the IAC under Section 144A(1) before any final order is made by the ITO, even in such cases. Even after he makes a reference and the draft order and the objections are before the IAC, the assessment is yet to be completed by the ITO, who awaits the directions of the IAC under Section 144B(4) of the Act. Therefore, while considering the matter under Section 144B of the Act, if the IAC finds it necessary to issue directions regarding matters not covered by the objections of the assessee and therefore not by the provisions of Section 144B(4) of the Act, then he can still issue such directions under Section 144A(1) of the Act, which, if related to the lines on which investigation should be made, will be deemed to be not prejudicial to the assessee and on following such directions, if the ITO is in a position to complete the assessment, he may do so. However, if again a situation arises after implementing the directions issued under Section 144A(1) of the Act regarding matters not covered by the objections against the draft order previously forwarded, which require a draft order to be made in view of the nature of variation falling in Section 144B(1), he has to prepare a draft order once again and forward the same to the assessee and on receipt of his objections, to forward such fresh draft order with the objections received against it again to the IAC under Section 144B(4) of the Act. It is obvious that in respect of the matters already covered under the objections of the assessee against a draft order, there

is no need for the IAC to issue directions under Section 144A(1), since he has, in that event, to proceed to issue directions under Section 144B(4) for enabling the ITO to complete the assessment.

9. The IAC who may not have had any opportunity to see the proceedings before the draft order and objections are forwarded to him under Section 144B(4) of the Act, can come across flaws in the matter which are not covered by the objections because the ITO may have omitted to make certain investigation or neglected important aspects of the matter. It cannot be said that the inspecting power of the IAC which he could have exercised under Section 144A(1) of the Act by issuing suitable directions in that regard till the eve of the preparation of the proposed order of assessment by the ITO, is suddenly taken away when it could be exercised only when the flaw necessitating the directions under Section144A(1) of the Act is noticed or as a matter of fact, could be noticed only when the matter is being considered under Section 144B(4) of the Act. Moreover, the same IAC, if he was vested with the powers of the ITO as contemplated by Section 144B(7) of the Act, read with Section 125(3) thereof, could have avoided such flaw before making such final order himself. It could not be the legislative intent to deny him the authority of issuing directions to do something in exercise of his inspecting powers which he could have himself done if invested with the power of the ITO while deciding the cases falling beyond the pecuniary limits contemplated by sub-section (6) of Section 144B of the Act.

10. Though the function of the ITO practically comes to an end when he prepares a draft order and refers it with the assessee's objections to the IAC under Section 144B(4) and the assessee cannot revise his returns, the thing that remains for the ITO to do is to pass a final order in accordance with the directions of the IAC, as held by the Supreme Court in Panchmahal Steel Ltd. Vs. U.A.Joshi, ITO (supra). In that case the Supreme Court construing the provisions of Section 139(5) of the Act, held that if the assessee's contention that even after making a reference under Section 144B, the assessee is entitled to file a revised return is accepted, then it may mean re-doing the entire exercise over again and the reference already made may be rendered unnecessary, which situation is not provided for in the Act. It is obvious that when the ITO prepares a draft order, he tentatively, i.e subject to the further procedure required to be followed and the directions of the IAC, does work out the total income of the tax payable thereon and once that is

known by the assessee on receipt of the draft order, to allow the assessee to revise the return which can be done only if he discovers any omission or wrong statement therein, would amount to giving him an opportunity to wriggle out from the consequences of filing of a false return, when the omission or wrong statement may have already been detected by the ITO in his draft order. That could never be the intendment of the law and that is why there could be no question of entertaining a revised return once a draft assessment order is made and the matter is referred alongwith the assessee's objections to the IAC under Section 144B(4) of the Act, as held by the Hon'ble Supreme Court. This ratio however, cannot be extended to denying the IAC of his power to issue directions to the ITO under the provisions of Section 144A(1) when a reference is made to him under Section 144B of the Act. In fact, the IAC comes into picture for exercise of his authority to issue directions for the guidance of the ITO to complete the assessment only when he receives the reference and he can either confine himself to the objections raised by the assessee or, if need be, issue directions under Section 144A(1) as regards the matters not falling within the scope of the objections, but which he may find to be important enough to merit investigation and consideration for completing the assessment i.e. for assessing the total income of the assessee and the sum payable thereon. The expression "to enable him to complete the assessment", clearly refers to the making of the final order of assessment, which is required to be made before the expiry of the time limit provided by Section 153 of the Act, which provides for "time limit for completion of assessments and reassessments". Once completion of assessment means making of a final order of assessment as is clear from Section 153 of the Act, the powers that the IAC can exercise under Section 144A(1) would extend till the stage of making of the final order of assessment, which means he can issue directions till the final assessment order is made. This course alone would give the IAC the effective powers of issuing the directions that are intended to be conferred on him by Section 144A(1) of the Act.

11. The provisions of Section 144(3) contemplate definitive assessment, and a tentative assessment or an assessment subject to revision is not an assessment at all. An assessment is not a piece of paper, it is an official act or operation. It is the ITO's ascertainment on consideration of all the relevant circumstances including some times his own opinion, of the amount of tax chargeable to a given tax-payer. When he has

completed his ascertainment of the amount and determination of tax, he sends the notice of demand. The act of assessment is complete only when he makes the final order. Therefore, the powers under Section 144A (1) could be exercised till such final order is made or a draft order is prepared by making a tentative assessment by following the directions that may have been given by the IAC.

12. While it is not necessary for the ITO to seek guidance under Section 144A(1) of the Act and he can complete the assessment in matters which are within his pecuniary limits set by the Board under Section 144B (6) of the Act, he has to defer completion of the assessment until he receives directions in the matters, which exceed those pecuniary limits where objections are filed against the draft order and forwarded alongwith it to the IAC. The wide powers of the IAC to issue directions under Section 144A(1) of the Act would not be eclipsed merely on the making of a reference in which the IAC's power to issue directions is rather limited to the matters covered by the objections. When having regard to the nature of the case or amount involved or for any other valid reason he finds that in respect of the matters not covered by the objections, the record warrants the other matters to be investigated, he is not precluded from resorting to the powers under Section 144A(1) notwithstanding the reference made to him under Section 144B(4) of the Act. The crux of the matter is that in either case the assessment not being yet complete, the reference under Section 144B(4) does not immunise the assessee from further investigation by resort to the provisions of Section 144A(1) of the Act.

In this view of the matter, the decision of the Supreme Court in Panchmahal Steel Ltd. (supra) cannot assist the assessee.

13. As noted above, the Tribunal proceeded on the footing that the IAC had for the first time come up with the addition of Rs. 5,43,500 in respect of the transactions which were entered into by the assessee company in favour of the aforesaid three companies. The Tribunal did not go in to the merits of the matter and specifically stated that it was not up-holding the order of the CIT (Appeals), which was in favour of the assessee for the reasons which he had given, but it was upholding that order on the footing that the IAC could not have come up with such additions in his directions given on the draft assessment order. From the cryptic reasoning of the Tribunal on this count, it is clear that the

Tribunal totally lost sight of the fact that there was earlier a draft order forwarded by the ITO under Section 144B(4) of the Act on 16.2.1979 and thereafter, directions were issued under Section 144A(1) of the Act by the IAC to the ITO, which fact was clearly mentioned in the final order of the ITO in paragraph 14.1 of his order. Those were the directions which only required the ITO to make enquiries in respect of the sales carried out by the Engineering Division of the assessee to the three private limited companies. It is clear from the nature of directions that these were intended only to provide lines on which further investigation connected with the assessment was to be made by the ITO. The explanation to Section 144A(1) clearly lays down that no direction as to the lines on which the investigation connected with the assessment should be made, shall be deemed to be a direction prejudicial to the assessee. The expression "direction as to the lines on which an investigation connected with the assessment should be made" is of a wide amplitude and there is no reason to confine it to mere investigations on the points which are already investigated. Such an interpretation as was sought to be suggested on behalf of the assessee, would render the explanation ineffective in respect of a larger number of cases where investigation which ought to have been made, has not been made, rendering nugatory the very power which was conferred on the IAC under Section 144A(1) of the Act. The reason underlying the explanation to Section 144A(1) appears to be that for starting investigations in exercise of the statutory powers, it is not incumbent upon the authority to give an opportunity to the assessee to show cause as to why investigation should not be made. The assessee would have ample opportunity during the investigation, but, for commencement of the investigation, the law does not contemplate in the said provision any opportunity of hearing being given to the assessee and that fact is made explicit in the explanation. The nature of the enquiries which were directed by the IAC under Section 144A(1) were only for the purpose of investigation in to the transactions which the assessee had entered with the three private limited companies and this direction clearly fell within the explanation to Section 144A(1) of the Act and was not to be treated as prejudicial to the assessee as a result of which the assessee was not required to be heard before directing such investigation.

14. The learned Counsel for the assessee tried to rely upon the decision of the Calcutta High Court in Asian Industries Vs. Inspecting Assistant Commissioner of Income Tax, reported in 182 ITR 370, in support of his

contention that the directions under Section 144A(1) could not have been issued when the reference was made under Section 144B of the Act, but on a close scrutiny it appeared from the judgement that the High Court had found that no steps were taken at all by the IAC as envisaged or contemplated under Section 144A of the Act. Therefore, that decision could not help the assessee. We may recall that the Calcutta High Court in Arrah Sasaram Light Railway Co.ltd. Vs. Commissioner of Income Tax, reported in 204 ITR 807, while considering the provisions of Section 144A and Section 144B of the Act, held that while a matter comes before the IAC under Section 144B of the Act, he is not entitled to travel beyond the proposed additions and has to confine his review in respect of the additions that were proposed by the ITO in the draft order under Section 144A, the IAC has a free hand. The language of Section 144A does not bind the IAC to issue directions only on the points which were referred to him under that provision by the ITO or by the assessee. He has the power on his own motion to call for the record of any pending assessment and it is the totality of the assessment that is open before him for directions.

15. The Kerala High Court in CIT Vs. N. Krishnan reported in 172 ITR 604 has held in context of the provisions of Section 144A, 144B, 153 and sub-section (1)(iv) to Section 153 of the Act, that the time for completing the assessment having been statutorily extended by reason of the reference for the additional period prescribed under Explanation 1(iv) to Section 153, the recomputation of the amounts by the IAC whether or not with the concurrence of the assessee, on items not arising from the reference, was a perfectly valid exercise of power in terms of Section 144A(1).

16. The Karnataka High Court in CIT Vs. M.S.P Exports Pvt.Ltd., reported in 196 ITR 762, while considering the provisions of Section 144A and 144B of the Act, has held that there can be no doubt that an assessment is not complete when only a proceeding under Section 144B is pending. In fact, under Section 144B, only a draft order is prepared. The assessment is to be completed only after IAC issues appropriate directions under Section 144B(4), after which the ITO will have to complete the assessment. Similarly, under Section 144A(1), the directions that may be issued by the IAC would enable the ITO to complete the assessment. Until an assessment is completed, the proceedings for assessment will have to be treated as pending. It was therefore held that the provisions of Section 144A of the Act could be invoked even while exercising the power

under Section 144B, subject to the assessee being heard in the matter where the directions are prejudicial to the assessee.

17. For the reasons that we have indicated hereinabove, we are of the view that the Tribunal committed an error in deleting the addition of Rs. 5,43,500/- from the assessment of the assessee on the ground that the IAC could not have issued directions in that regard in the draft approval given under Section 144B of the Act. The question No.2 is accordingly answered in the negative in favour of the Revenue and against the assessee. We make it clear that since the Tribunal did not go in to the merits of the addition, we are not called upon to decide that aspect in context of this question. The reference stands disposed of accordingly with no order as to costs.

The Registry is directed to forward copy of this judgement to the Tribunal as contemplated by the provisions of Section 260(1) of the said Act.

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*/Mohandas